

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JEREMY SCHUH,

Petitioner,

v.

CASE NO. 08-11393

HONORABLE GERALD E. ROSEN

WILLIE O. SMITH,

Respondent.

**ORDER DENYING AS MOOT PETITIONER'S MOTION FOR PERMISSION
TO FILE AN APPLICATION FOR A CERTIFICATE OF APPEALABILITY**

This matter is pending before the Court on petitioner Jeremy Schuh's motion for permission to file an application for a certificate of appealability. As explained more fully in the following paragraphs, the motion is moot. Consequently, it must be denied.

In 2003, Petitioner pleaded guilty in Washtenaw County Circuit Court to receiving and concealing a stolen firearm. He was initially placed on probation, but later incarcerated after the trial court determined that Petitioner had violated the conditions of probation by not becoming tethered to a residence other than his parents' home by August 5, 2004.

Following an unsuccessful appeal in state court, Petitioner sought habeas corpus relief in this Court. On August 28, 2012, the Court conditionally granted a writ of habeas corpus. The Court ruled that the trial court violated Petitioner's right to due process of law by failing to give adequate consideration to a probation officer's affidavit, which tended to contradict the officer's testimony at a prior probation violation hearing. The Court ordered the State to release Petitioner unless, within sixty days of the Court's order, the State provided Petitioner with a hearing to determine whether he could be safely released from custody under the supervision of a

state probation officer.

Petitioner appealed the Court's decision, and the State moved for reconsideration of the decision. On October 10, 2012, the Court granted in part the State's motion for reconsideration by modifying the relief granted. The Court ordered the State to release Petitioner unless it took steps to grant him a new probation revocation hearing by October 27, 2012. *See* ECF No. 59. Petitioner then filed the pending motion for permission to file an application for a certificate of appealability, if necessary, after the state court held a probation revocation hearing and made a ruling.

The State subsequently notified the Court that, on October 25, 2012, Petitioner pleaded guilty in Washtenaw County Circuit Court to violating the terms of his probation. He admitted to the state trial court that he was not tethered on August 5, 2004. Washtenaw County Circuit Judge David S. Swartz then sentenced Petitioner to one year in jail with credit for one year already served in jail. Records maintained by the Michigan Department of Corrections on its official website confirm that Petitioner is no longer in custody. He was discharged on October 25, 2012,¹ and, on December 13, 2012, he moved to voluntarily dismiss his appeal in the United States Court of Appeals for the Sixth Circuit. On December 17, 2012, the Court of Appeals granted his motion and dismissed the appeal. *See Schuh v. Smith*, No. 12-2290 (6th Cir. Dec. 17, 2012) (unpublished).

Because Petitioner is no longer in custody and because he has voluntarily dismissed his appeal, his motion for permission to file an application for a certificate of appealability is moot.

Accordingly,

¹ *See* <http://mdocweb.state.mi.us/OTIS2/otis2.aspx>.

IT IS ORDERED that Petitioner's motion for permission to file an application for a certificate of appealability [dkt. #60] is DENIED as moot.

s/Gerald E. Rosen
Chief Judge, United States District Court

Dated: April 8, 2013

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on April 8, 2013, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5135